THE ADMISSION OF OREGON.

SPEECH

OF

HON. HENRY L. DAWES,

OF MASSACHUSETTS.

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1859.

SPEECH OF MR DAWES.

The bill for the admission or Oregon into the Union being under consideration—

Mr. DAWES said:

Mr. SPEAKER: I have been unable to coincide with the views of my colleague, [Mr. COMINS,] who has just taken his seat, and I am compelled to vote against the admission of Oregon under the Constitution which she brings here in her application. I desire, briefly, to assign a few reasons for that vote. The question of the admission of a new State into our Confederacy is addressed to the largest discretion of Congress. The Constitution does not command us to admit new States. It simply authorizes the exercise of that power, and leaves to each legislator the largest exercise of his discretion, unburdened by a single obligation, and untrammelled, save by a single limitation. There may be, and doubtless often are, considerations which go to modify, and to some extent to control, that discretion. A large and increasing population, stable and permanent in its character, may have induced an invitation in advance, in the form of an enabling act. Civil commotion may have so disturbed the order of things in a Territory, or the Territorial Government may have so failed to discharge its proper functions, or to render itself acceptable to the people, that one may feel constrained, other things being consistent, to cast a vote for the admission of a Territory as a State. But in the case of Oregon, I know of no such consideration.

So far as we have any information, official or otherwise, respecting the population of the Territory, it does not contain more than fifty or sixty thousand inhabitants. But I would as soon vote for her admission into the Union, with sixty thousand, as with any other number, if the circumstances which surround her Territorial existence and position are such as to justify it. I make no objection here, that she does not come under the enabling act.

Other things being equal, I would just as soon vote for her admission here without as with an enabling act, if she came here with a Constitution acceptable to her people and republican in principle. No civil commotion exists in all her borders; she is at peace, and is slowly and gradually increasing in population, coming forth by degrees from the chrysalis of an infant Territory, and clothing herself with the maturity of a State.

I feel, under the circumstances, not only perfectly free, but called upon, to examine her application, and to weigh both the arguments in favor of her admission, and the objections which lie against it. My objections to voting for her admission lie in her Constitution itself. I cannot agree with my colleague, that her Constitution is republican in form. I understand that phraseology to mean something more than mere form. I understand it to be my duty to look into that Constitution, and see whether it is republican in *principle*.

I am not to be driven from the position of opposition to this Constitution, because of the charge made against this side of the House—of opposition to the admission of a free State, for the reason that it is Democratic in its political character. The participation I had last session in bringing Minnesota upon this floor, has given evidence that I will admit a free State, whatever may be the political character of that State. I refer to the record of the Thirty-fourth Congress, where I find that my colleague voted against the enabling act for the admission of a free State into the Union, because of

some, to him, valid objections to that act, or the organic law it enabled her to make. In the vote upon the enabling act for the admission of Minnesota, I find my colleague's name recorded against it; and now, strengthened by his example, I make bold, here, to raise my voice in opposition to the admission of Oregon, for reasons found in her Constitution.

Those portions of that Constitution most objectionable in my mind, I send to the Clerk's desk, that they may be read together. They have often been alluded to in this debate, but not too often; for more than one reading is necessary, in order to learn the full scope and meaning of those several propositions.

The Clerk read as follows:

"And every white male of foreign birth, of 'the age of twenty-one years and upwards, who 'shall have resided in the United States one 'year, and shall have resided in this State during 'the six months immediately preceding such 'election, and shall have declared his intention 'to become a citizen of the United States one 'year preceding such election, conformably to 'the laws of the United States on the subject of 'naturalization, shall be entitled to vote at all 'elections authorized by law."

"No free negro or mulatto, not residing in 'this State at the time of the adoption of this 'Constitution, shall ever come, reside, or be 'within this State, or hold any real estate, or 'make any contract, or maintain any suit there-'in; and the Legislative Assembly shall pro-'vide by penal laws for the removal, by public 'officers, of all such free negroes and mulattoes, 'and for their effectual exclusion from the State, 'and for the punishment of persons who shall 'bring them into the State, or employ or har-'bor them therein."

"No Chinaman, not a resident of this State 'at the time of the adoption of this Constitu-'tion, shall ever hold any real estate or mining 'claim, or work any mining claim therein."

"The Legislative Assembly shall provide by 'law, in the most effective manner, for carrying 'out the above provision."

"No negro, Chinaman, or mulatto, shall have 'the right of suffrage."

"And the Legislative Assembly shall have 'power to restrain and regulate the immigra-'tion to this State of persons not qualified to 'become citizens of the United States."

Mr. DAWES. Sir, the first of the articles read at the Clerk's desk, I do not propose, in the limited time I have now allotted me, to discuss at much length. It is an objection, in my mind, to the admission of Oregon, and a departure from the true meaning of the Constitution, which, in my judgment, was never intended to permit any but citizens to exercise the elective franchise. It first obtained in the case of Michigan, and has been fruitful of evil from that day to this. It encountered, in the first instance, the unsuccessful opposition of all the great statesmen of that day, foremost among whom was Mr. Calhoun, now the highest authority with those who control this House.

The second is, in my opinion, as plainly and as palpably a violation of the Constitution of the United States as any provision capable of being draughted by man. I hold myself responsible upon this floor, if by my vote I breathe the breath of life into that Constitution, just as much as if it were embodied in a bill before Congress, and by my vote that bill was made a law. Without the vote of a majority upon this floor, that Constitution falls still-born; by the vote of a majority, it becomes the organic law of the Territory of Oregon. I am not able, whatever may be the ability of others upon this floor, to divest myself of the responsibility, if I vote for this bill, of voting for that which, in my conscience, I believe to be unconstitutional. Indeed, the bill before us declares, in so many words, that the Constitution of Oregon is in conformity with that of the United States. That provision of the Constitution which excludes free people of color from the Territory is, in my opinion, as I have said, clearly unconstitutional:

"No free negro or mulatto, not residing in 'this State at the time of the adoption of this 'Constitution, shall ever come, reside, or be 'within this State, or hold any real estate, or 'make any contract, or maintain any suit 'therein."

Sir, that cannot, in the nature of things, be republican in this Confederacy of States, which cannot be adopted and carried out in practice under the Constitution by all the States. One State of this Union cannot arrogate to itself prerogatives, the exercise of which cannot be assumed by all the States of this Union. If the State of Oregon has the right to drive from its borders all free people of color, every other State has the same right; and we might as well here enact a law to drive every one of them into the broad ocean, as to authorize by our vote here the State of Oregon to drive them from the Territory. It is a part of that scheme long since initiated, and already ripened into statutes in some of the States, of degrading, oppressing, and at last subjugating, the free people of color into Slavery in this country—a scheme as inhuman and as infamous as it is unconstitutional.

It is unconstitutional under that provision of the Constitution of the United States which guaranties to citizens of each State all the privileges and immunities of citizens in the several States; and, in maintenance of that doctrine, I need not go further than the Dred Scott decision. That decision, which struck more fatal blows at the rights of men than ever before, in the history of the Government, fell upon innocent and unoffending heads, is not broad enough to take this clause of the Oregon Constitution out of conflict with that of the United States. Here is the doctrine laid down by Chief Justice Taney, in the opinion of the

Court, where he defines what that clause in the Constitution of the United States guaranties to the citizen of one State, when he goes into another.

"But, so far as mere rights of person are 'concerned, the provision in question is confined to citizens of a State who are temporarily 'in another State without taking up their residence there. It gives them no political rights 'in the State, as to voting, or holding office, or 'in any other respect. For a citizen of one 'State has no right to participate in the Government of another. But, if he ranks as a 'citizen in the State to which he belongs, within the meaning of the Constitution of the 'United States, then, whenever he goes into 'another State, the Constitution clothes him, as 'to the rights of person, with all the privileges 'and immunities which belong to citizens of the 'State. And if persons of the African race are 'citizens of a State, and of the United States, 'they would be entitled to all of these privileges 'and immunities in every State, and the State 'could not restrict them; for they would hold 'these privileges and immunities under the 'paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and 'laws of the State to the contrary notwithstanding. And if the States could limit or restrict 'them, or place the party in an inferior grade, 'this clause of the Constitution would be unmeaning, and could have no operation; and would 'give no rights to the citizen when in another 'State. He would have none but what the 'State itself chose to allow him. This is evidently not the construction or meaning of the 'clause in question. It guaranties rights to 'the citizen, and the State cannot withhold 'them."

Now, I think no man will for a moment contend, that if the classes of persons described in this section of the Oregon Constitution, now under consideration, shall be included in this idea of a citizen, then, according to the Constitution, as expounded in the Dred Scott decision itself, this provision, which attempts not only to drive them from its border, but to prevent their holding property, making contracts, suing in the courts, or even eating the bread of life within her borders, does violate that provision of the Constitution to which I have referred. This same opinion defines who are the citizens of the United States, to whom these rights are guaranteed. I ask the House to listen to that definition, and then I will show the House that that definition applies to a large class of my own constituents, and the constituents of my colleague, who has just taken his seat, and who represents a commercial city from which, because of their employment as seamen, more than from other sections of our State, will they go forth to Oregon, and come in conflict with this provision. Chief Justice Taney says:

"It is true, every person, and every class and 'description of persons, who were at the time 'of the adoption of the Constitution recognised 'as citizens in the several States, became also 'citizens of this new political body; but none 'other; it was formed by them, and for them 'and their posterity, but for no one else. And the 'personal rights and privileges guarantied to 'citizens of this new sovereignty were intended 'to embrace those only who were then members of the several State communities, or who 'should afterwards by birthright or otherwise become members, according to the provisions of 'the Constitution and the principles on which 'it was founded. It was the union of those who 'were at that time members of distinct and separate political communities into one political 'family, whose power, for certain specified purposes, was to extend over the whole territory 'of the United States. And it gave to each 'citizen rights and privileges outside of his 'State which he did not before possess, and 'placed him in every other State upon a perfect 'equality with its own citizens as to rights of 'person and rights of property; it made him a 'citizen of the United States."

Now, sir, in respect to my own State. In 1780, she adopted her present Constitution; before which the shackles fell from the limbs of every slave within her borders, and he stood forth clothed with all the privileges, rights, and immunities, of a citizen. The Constitution of Massachusetts, in the rights, privileges, and immunities, of the citizen, is no more a respecter of persons than is the God her people worship. From 1780 until 1789, when the Constitution of the United States was adopted, every colored man who lived in that community was just as much a citizen as every white man. And the Chief Justice, in this opinion, says that he and his *posterity* are to-day citizens of the United States, and have all the rights, and privileges, and immunities, in the State of Oregon, that every citizen of that State has. I cannot understand, sir, how a member from my own State, in the honest discharge of his duty, always as honest a discharge of it as my own, can come to the conclusion that it is his duty, by his vote, to breathe the breath of life into a provision of a Constitution that would disfranchise a large portion of the people of Massachusetts. I desire to call up, in the recollection of my colleague, the efforts Massachusetts has made heretofore to test the rights of her citizens to the privileges and immunities of citizenship in other States. I desire to have it remembered—I do not intend ever to forget it—that Massachusetts has utterly failed to obtain a decision of the question in the highest tribunal of the country, whether or not there is any force and effect in this provision of the Constitution, as expounded, even in this latter day, by the Supreme Court of the United States. I, for one, do not intend to forget the indignities heaped upon her in her struggle to secure to her citizens their rights

under this clause. I will never vote to incorporate into the organic law provisions under which the constitutional rights of citizens of Massachusetts have been trampled in the dust, and her State sovereignty defied and insulted.

Sir, I desire to call attention to the phraseology of this provision; for there seems to be a studied malignity in this phraseology, that I cannot well comprehend in the Constitution of a State:

"No free negro or mulatto, not residing in 'this State at the time of the adoption of this 'Constitution, shall ever come, reside, or be, 'within this State."

They could not condescend to say "voluntarily." A citizen of my State may be drifted by stress of weather into their harbors; a whaler, with a citizen of my State, included in this provision, may be brought in there; and the humble sailor, having no command of the ship, no responsibility, and no control, may be taken in there against his will; and yet this Constitution imposes a duty upon the Legislature to provide penalties to be visited upon his head. Without being aware of it, he may come within the limits of that State, and incur the penalty. And, furthermore, he who shall "employ" or "harbor" such person, comes under the same visitation. They have not inserted "knowingly." It may be done ignorantly and innocently, and yet come within the letter of this provision.

And, sir, I do not know by what test a man may tell one of those from another class of colored persons which this provision of the Constitution permits to remain there. The Constitution has made no provision that they shall wear frontlets upon their brow; but whosoever, knowingly or not, innocently or designedly, whether in obedience to the Divine injunction to feed the hungry and clothe the naked, or with a design to violate the law; all alike are denounced as transgressors of the law, and each, one and all, come within this provision of the Constitution.

I desire also to say, sir, before I take leave of that provision which denies to a certain class of colored persons the right to bring suits in the courts of Oregon, that it exceeds in cruelty and inhumanity any provision touching the same subject in any slave code in the United States, so far as I know. There is not a slave in a slave State who has not, under her laws, a right to maintain a suit in her courts. I believe such an inhuman provision could not stand an hour, sir, in your own State of South Carolina. Let any man bring a colored person into Oregon, and claim him as a slave; if this Constitution is sanctioned by our votes and made the organic law of Oregon, there is no way given among men by which he could invoke her courts to give him his freedom. It is reserved for this so-called free State to invent a method more subtile and effectual for maintaining Slavery in her own borders than was ever devised south of Mason and Dixon's line. Thus it is that the most efficient instrumentalities for carrying out the great work of the slave propaganda are furnished by the North, and in the name of Freedom. This is the false and hollow-hearted pretence that Oregon is a free State.

The refined cruelty as well as unconstitutionality of these provisions justify the conclusion that the framers of this instrument sought in them to make to the institution of Slavery some atonement for having excluded it under the ordinary forms and name from the State. And the atonement seems to be ample. The people who will tolerate the one are prepared for the other. The victims of the one system are already in the vestibule of the other.

Again, take the provision in reference to the Chinamen. While that provision permits one class of Chinamen to reside within that State, with all the personal rights and privileges of citizens, it disables, while it permits them to reside there, another class of Chinamen; and thus that State, which pretends to come here upon the cardinal principle of equality, builds up two classes of foreign men in that community—one with personal rights and privileges as citizens; and another disabled, with no rights to hold real estate or to exercise any of the great immunities of citizens—one class of Chinamen mere serfs, and the other clothed with all personal rights. Now, there is a provision in our treaty with China, providing that the United States and China shall be forever at peace with each other, and with all the citizens thereof, "*without exception to persons or places;*" and I would like to ask gentlemen how that provision comports with the provision of the Constitution to which I have referred? I would like to know if there were such a treaty stipulation existing between us and Great Britain, and we should make an invidious distinction between different classes of her subjects, disabling upon the same soil some of them, and granting to others the personal rights of the citizen, whether we should not be called to account for it? It is an infraction of treaty stipulations, which are the supreme law of the land.

A Chinaman may become a naturalized citizen in California. What, then, would be his rights, under the Constitution, should he go to Oregon? He was a citizen of the United States before he left California, entitled under the Constitution to all the privileges and immunities of a citizen of Oregon, when he crosses the line. Yet this State Constitution says that he "shall never hold any real estate or mining claim, or work any mining claim, therein."

There is one other provision of this Constitution to which I have not alluded, although I have already quoted it. It is as follows:

"And the Legislative Assembly shall have 'power to restrain and regulate the immigra-'tion to this State of persons not qualified to 'become citizens of the United States."

Under this provision the African slave trade can be reopened. That is now prevented only by a law of Congress. We enact this provision by our votes in its favor, and it grants full authority to bring blacks from Africa, and to prescribe the terms and provisions upon which it may be done. I know of no way that any African, so brought, could, by the aid of the courts of Oregon, relieve himself from bondage. And, if we give this authority, no penalty can be visited upon the heads of those who participate in the traffic between Oregon and Africa.

This, sir, is not only not a republican Constitution, but it is not a *free* Constitution. It is a departure from all our ideas of a republican Constitution. It makes odious distinctions among classes of men—among individuals of the same class. It ruthlessly tramples the rights of the citizen in the dust. It arrogates to itself prerogatives that cannot be exercised in common by all the States. It trenches on the guarantees of the Constitution of the United States. Sworn to support that Constitution, I cannot sanction this. I cannot be driven from my opposition, because there are other provisions of this Constitution which incline some to call it a free State; or because, if I remand it back to a Territorial Government, under the Dred Scott decision, Slavery exists there. I demand something more than a free State in name. I want the reality. If Slavery exists in Oregon while a Territory, it is because the people want it; and if they want it, they will make it a slave State, in name as well as in fact, within a twelvemonth, if admitted.

These are some of the reasons why I cannot vote for this bill. I speak for no individual here but myself, and for no constituency but my own. I think I know their sentiments; and should I vote for this bill, I should expect to be burned in effigy at every cross-road in my district. I do not intend to disappoint, in this respect, the just expectation of those who sent me here. I shall vote NO.

[Here the hammer fell.]